



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2004

Mr. Steve Aragón
Chief Counsel
Texas Health Human Services Commission
P. O. Box 13247
Austin, Texas 78711

OR2004-8357

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210131.

The Health and Human Services Commission (the "commission") received a request for Medicaid reimbursement requests from McAllen-based Just for Kids or Texas Rehabilitation Investments Corporation, records of Medicaid funds granted to Just for Kids, any inspection notices sent to the rehabilitation company, any reports completed as a result of those inspections, and any completed audits conducted on the company from 1997 to 2003. You state that the commission does not maintain records responsive to the portion of the request seeking inspection notices sent to the rehabilitation company or reports completed as a result of those inspections. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 531.1021(g) of the

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information other statutes make confidential, such as section 531.1021(g) of the Government Code, which pertains to fraud or abuse investigations conducted by the commission's Office of Inspector General ("OIG"). You advise that the OIG is responsible for "the detection and investigation of fraud and abuse by health care providers who contract to provide health care services under the Medicaid program." See Gov't Code §§ 531.102, .1021. Section 531.1021(g) provides as follows:

All information and materials subpoenaed or compiled by the [OIG] in connection with an investigation are confidential and not subject to disclosure under [the Public Information Act (the "Act")], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the [OIG] or its employees or agents involved in the investigation conducted by the [OIG], except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

Gov't Code § 531.1021(g). You state that the submitted documents were compiled by the commission in connection with a pending Medicaid fraud and abuse investigation, and you advise that this information is maintained by the OIG. Based on your representations, we determine that the submitted information is confidential under section 531.1021(g) of the Government Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code.²

Finally, you ask this office to issue the commission a previous determination authorizing it to withhold all information for similar requests regarding fraud investigations by the commission. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the commission must withhold documents compiled and maintained by the commission's OIG in connection with a Medicaid fraud and abuse investigation under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code, except that this information may be disclosed to the office of the attorney general and law enforcement agencies. See Gov't Code § 531.1021(g); see also Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to this type of information requested of the commission under Chapter 552 of the Government Code. *Id.* This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

²Because our ruling is dispositive, we need not address your remaining arguments.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 210131

Enc. Submitted documents

c: Ms. Victoria Hirschberg
Reporter
The Monitor
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McAllen, Texas 78504
(w/o enclosures)